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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/620,761

07/17/2003

Jean-Louis Gucret

124371

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25944

7590

10/02/2007

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EXAMINER

MANAHAN, TODD E

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

10/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/620,761	GUERET, JEAN-LOUIS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Todd E. Manahan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-17, 19-23, 26-37, 40-56 and 59-102 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-17, 19-23, 26-37, 40-56 and 59-102 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/24/07</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiment wherein the receptacle is fitted with a receptacle that is fitted with the device of claim 1 (see claim 33) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 33 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 33 recites a receptacle fitted with the receptacle and device of claim 15, i.e. two receptacles and one device as set forth in claim 1. However such an embodiment is not disclosed in the specification in such a manner so as to enable one skilled in the art to fit receptacle 30 onto another receptacle 30 that is provided with the device 29.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9, 13, 68-76, 78, 81 and 100 are rejected under 35 U.S.C. 102(b) as being anticipated by Flax (United States Patent No. 3,441,033).

Regarding claims 1-7, 9, 13, and 100, Flax discloses a device comprising at least two containers 14,16 configured to be superposable on a stacking axis. One container 14 is configured as a lid with a hinge 26 with the other container 16 added thereto. Each container

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defines a housing. The device further comprises a lid 40 and an applicator member 78 is secured in one of the housings (see figure 1). The housings may be opened independently of one another. The containers pivot about one another about an axis not parallel to the stacking axis. There are at least two hinges. At least one of the housings contains a cosmetic product. The device does not comprise fixing means for fixing by snap-fitting, screwing or by friction. At least two of the containers contain different substances (see col. 6, lines 4-9).

Regarding claims 68-76, 78, and 81, Flax discloses a device comprising at least three containers 12,14,16 configured to be superposable on a stacking axis. One container 14 is configured as a lid with a hinge 26 with the other container 16 added thereto. Each container defines a housing. The device further comprises a lid 40 and an applicator member 74 is secured to the housing of the end container (see figure 1). The housings may be opened independently of one another. The containers pivot about one another about an axis not parallel to the stacking axis. There are at least two hinges. At least one of the housings contains a cosmetic product. The device does not comprise fixing means for fixing by snap-fitting, screwing or by friction.

Claims 16, 17, 19-23, 26, 27, 30, and 100 are rejected under 35 U.S.C. 102(b) as being anticipated by Kogyo (Japanese Patent No. 63-17031).

Kogyo discloses a device comprising at least two containers 2,2A configured to be superposable on a stacking axis. One container 2 is configured as a lid with a hinge 9 with the container added thereto. Each container defines a housing. The device further comprises a lid 3 and an applicator member 5c is secured in one of the housings (see figure 1). The containers pivot about one another about an axis not parallel to the stacking axis. There are at least two hinges 9. The hinges are angularly offset. One of the housings contains cosmetic. Though only

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two containers are shown, Kogyo discloses that more containers can be added as desired.

Regarding the limitation of the axis of rotation of the hinges not being parallel, it is noted that in figure 1, the axis of rotation of the hinges are perpendicular and in figures 21-23 they are angularly offset so as not to be parallel.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 13, and 68-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyo in view of Miller (United States Patent No. 2,823,681).

Kogyo discloses the invention essentially as claimed except for the applicator member being secured to the housing. Miller discloses a compact in which the applicator 34a is secured to the housing (see figures 1 and 2, col. 2, lines 3-9). It would have been obvious to one skilled in the art to secure the applicator to the housing of Kogyo in view of Miller in order to prevent it from accidentally falling out of the housing.

Claims 11, 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyo in view of Miller as applied to claim 1 and further in view of Playe (United States Patent No. 5,992,427).

Regarding claims 11 and 12, et al., the combination Kogyo as modified by Miller discloses the claimed invention except that the second container is formed with the lid to the first container instead of being affixed to the lid of the first container. Playe shows that forming the

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container with the lid (fig. 4) and forming the container separate therefrom and affixing it to the lid (fig.3) are equivalent structures known in the art. Therefore, because these two were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to form the container separate therefrom and affixing it to the lid instead of form the container with the lid. Regarding claims 14 and 15, Playe discloses forming the bottom of a container such that it may be used as a closure cap for a different receptacle. It would have been obvious to one skilled in the art to make the bottom of the lowest container of the combination Kogyo as modified by Miller such that it may form a closure cap to another receptacle and fit it to such receptacle in view of Playe in order to provide the device with a means for containing a different type cosmetic (e.g. a cream or lotion or toner).

Claims 28, 29, 31-33, and 82-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyo in view of Playe.

Regarding claims 28 and 29, Kogyo discloses the claimed invention except that the second container is formed with the lid to the first container instead of being affixed to the lid of the first container. Playe shows that forming the container with the lid (fig. 4) and forming the container separate therefrom and affixing it to the lid (fig.3) are equivalent structures known in the art. Therefore, because these two were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to form the container separate therefrom and affixing it to the lid instead of form the container with the lid. Regarding claims 31-33 and 82-99, Playe discloses forming the bottom of a container such that it may be used as a closure cap for a different receptacle. It would have been obvious to one skilled in the art to make the bottom of the lowest container of Kogyo such that it may form a closure cap to

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another receptacle and fit it to such receptacle in view of Playe in order to provide the device with a means for containing a different type cosmetic (e.g. a cream or lotion or toner).

Claims 34-37, 40-48 and 101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyo in view of Playe.

Kogyo discloses the invention essentially as claimed except for the hinge being an integrally molded plastic film (well known in the art as a "living hinge"). Playe shows that forming a hinge as an integrally molded plastic film. Because both Kogyo and Playe disclose hinges, it would have been obvious to ones skilled in the art to substitute one hinge for the other to achieve the predictable result of pivotally attaching two structures. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007). Regarding claims 43 and 44, Playe shows that forming the container with the lid (fig. 4) and forming the container separate therefrom and affixing it to the lid (fig.3) are equivalent structures known in the art. Therefore, because these two were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to form the container separate therefrom and affixing it to the lid instead of form the container with the lid. Regarding claims 46-48, Playe discloses forming the bottom of a container such that it may be used as a closure cap for a different receptacle. It would have been obvious to one skilled in the art to make the bottom of the lowest container of Kogyo such that it may form a closure cap to another receptacle and fit it to such receptacle in view of Playe in order to provide the device with a means for containing a different type cosmetic (e.g. a cream or lotion or toner).

Claims 49-56, 59-61, 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyo in view of Rapchak et al. (United States Patent No. 5,667,094).



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Rapchak et al. disclose two hingedly attached bodies 10,11 each having gripping tabs 17,24 diametrically opposed to the hinge 20 and positioned side-by-side (see figure 3). It would have been obvious to one skilled in the art to provide the hingedly attached containers of Kogyo with gripping tabs diametrically opposed to the hinge and positioned side-by-side in view of Rapchak et al. in order to facilitate opening of the containers.

Claims 62, 63, and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyo in view of Rapchak et al. as applied to claim 49 and further in view of Playe.

Regarding claims 62 and 63, et al., the combination Kogyo as modified by Rapchak et al. discloses the claimed invention except that the second container is formed with the lid to the first container instead of being affixed to the lid of the first container. Playe shows that forming the container with the lid (fig. 4) and forming the container separate therefrom and affixing it to the lid (fig.3) are equivalent structures known in the art. Therefore, because these two were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to form the container separate therefrom and affixing it to the lid instead of form the container with the lid. Regarding claims 65-67, Playe discloses forming the bottom of a container such that it may be used as a closure cap for a different receptacle. It would have been obvious to one skilled in the art to make the bottom of the lowest container of the combination Kogyo as modified by Rapchak et al. such that it may form a closure cap to another receptacle and fit it to such receptacle in view of Playe in order to provide the device with a means for containing a different type cosmetic (e.g. a cream or lotion or toner).

*Response to Arguments*

In response to applicant's arguments that Kogyo does not disclose the applicator secured to the housing, such arguments are persuasive, however these claims have been rejected with a new grounds of rejection using the Miller reference which discloses securing an applicator to a housing.

In response to applicant's arguments that Kogyo does not disclose or suggest adding a third container, applicant's attention is directed to figures 19, 20, 23, and 26. As clearly shown in these figures, the bottom of the upper container and the bottom of the lower container are identical and include elements 11,12,14 that enable the two containers to be stacked vertically.

In response to applicants arguments that Kogyo does not disclose a lid connected via a hinge to a first container and a second container fixed on the lid, it is noted that the bottom of the upper container constitutes a lid hingedly attached to the lower container with the upper container fixed to the lid by being molded therewith (similar to applicant's embodiment shown in figure 9).

In response to applicant's arguments that Kogyo does not disclose the hinge molded integrally of plastic material, such arguments are persuasive, however these claims have been rejected with a new grounds of rejection using the Playe reference which discloses a "living hinge" that is integrally molded of a plastic film. It also to be noted that such "living hinges" are old and well known in the art.

In response to applicant's arguments that Kogyo does not disclose the grip tabs diametrically opposed to the hinge, such arguments are persuasive, however these claims have

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been rejected with a new grounds of rejection using the Rapchak et al. reference which discloses grip tabs diametrically opposed to the hinge.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Playe was utilized for the teaching of configuring a cosmetic container as a closure cap for a receptacle (figure 4).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is 571 272- 4713. The examiner can normally be reached on Mon-Fri.

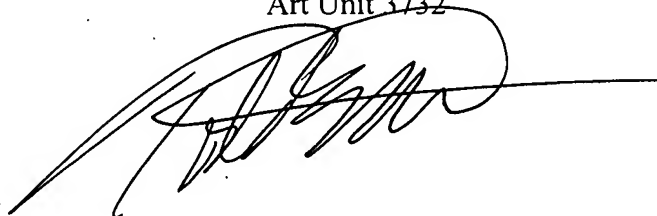
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Rodriguez can be reached on 571 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Todd E Manahan  
Primary Examiner  
Art Unit 3732

T.E. Manahan  
17 September 2007

A handwritten signature in black ink, appearing to read 'T.E. Manahan', with a long horizontal line extending to the right.